

### **REMARKS**

This is in response to the Office Action dated June 3, 2004.

Claims 1, 4, and 22 are amended, and claims 11-21 are withdrawn from consideration; as a result, claims 1-10 and 22-28 are now pending in this application.

### **Election/Restriction**

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species.

Applicant affirms the provisional election made by attorney Timothy Bianchi during the phone conversation with the Examiner on May 24, 2004, without traverse, to prosecute the invention of embodiments 1 and 3, including claims 1-10 and 22-28. Applicant reserves the right to reintroduce claims 11-21 upon allowance of a generic claim.

### **Double Patenting Rejection**

Claims 1-10, or 1-10, or 1 and 22-28, or 1 and 2, or 1-10 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-17 or 1-18, or 1-11, or 1-28, or 1-27 of U.S. Patent Nos. 6,684,103 or 6,542,775, or 6,351,673, or 6,630,127 or 6,144,880.

A Terminal Disclaimer in compliance with 37 CFR 1.321(c) is enclosed herewith to overcome these rejections. In so doing, Applicant does not admit the assertions set forth in the Office Action dated June 3, 2004.

Applicant respectfully requests reconsideration and allowance of claims 1-10 and 22-28.

### **§102 Rejection of the Claims**

Claims 1-4 were rejected under 35 USC § 102(b) as being anticipated by Salo et al. (U.S. Patent No. 5,334,222, hereinafter "Salo").

### **Claim 1**

Claim 1 was amended to better describe the recited subject matter. Insofar as the rejection is applied to claim 1, Applicant respectfully traverses the rejection and submits that the cited reference does not provide the recited subject matter. For example, Applicant is unable to

find in the cited portions of Salo, among other things, any teaching of delivering a pacing pulse to approximately optimize a cardiac performance parameter being a measure of systolic performance using a delay time interval referenced to a first cardiac event and calculated from a first time interval between a first cardiac event and a second cardiac event by using a predetermined mathematical relationship of the first time interval to an approximately optimal delay time interval for optimizing the cardiac performance parameter, as recited in claim 1.

Applicant respectfully requests reconsideration and allowance of claim 1.

#### *Claims 2-4*

Applicant respectfully traverses the rejection of claims 2-4. Claims 2-4 are dependent on claim 1, which is believed to be patentable for the reasons set forth above. Thus, the discussion above for claim 1 is incorporated herein to support the patentability of claims 2-4.

Applicant respectfully requests reconsideration and allowance of claims 2-4.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6912 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

JIANG DING ET AL.

By their Representatives,

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Date Aug 31, 2004

By [Signature]  
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 31 day of August, 2004.

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